

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. Nos. 08-3452 & 08-3893

DAMON JONES,
Appellant

VS.

LORI LAPINA, P.A.; STANLEY FALOR, M.D.; JOHN OR JANE DOE

(W.D. Pa. Civ. No. 06-cv-01209)

Present: FISHER, JORDAN and VAN ANTWERPEN, Circuit Judges

Submitted are:

- (1) Appellant's motion to quash untimely brief;
 - (2) Appellees' response to motion quash;
 - (3) Appellees' addendum to response;
 - (4) Appellant's reply to Appellees' response;
 - (5) Appellees' supplemental response to motion to quash; and
 - (6) Appellees' addendum to supplemental response
- in the above-captioned case.

Respectfully,

Clerk

MMW/JAV/clw

JUDGMENT ORDER

The foregoing has been considered by the Court and is ruled upon as follows. We note

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first that although the District Court's first July 8, 2008 order denied Jones' first motion to alter or amend, its second July 8, 2008 order gave Jones an opportunity to respond to the Defendants-Appellees' motion to dismiss and the Magistrate Judge's Report and Recommendation. As that is essentially the relief Jones sought in his first motion to alter or amend, Jones' appeal from the first order is moot. See, e.g., In re Orthopedic Bone Screw Prod. Liab. Litig., 94 F.3d 110, 111 (3d Cir. 1996). Moreover, the order effectively reopened the case and, as a result, there was no longer a final, appealable order in the case. See Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 373 (1980). Accordingly, we dismiss the appeal docketed at 08-3452.

With regard to the appeal docketed at 08-3893, this matter is remanded to the District Court to consider the Defendants-Appellees' motion to dismiss in light of Jones' response. The District Court was incorrect in its conclusion that it lacked jurisdiction because of Jones' first notice of appeal. See Mondrow v. Fountain House, 867 F.2d 798, 800 (3d Cir. 1989). Jones' motion to quash Appellees' brief is denied.

By the Court,

/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: October 8, 2009
CLW/cc: Mr. Damon Jones
Alan S. Gold, Esq.